

1 1. This is an adversary proceeding in bankruptcy brought by Heritage Pacific
2 Financial, LLC. dba Heritage Pacific Financial pursuant to 11 U.S.C. § 523.

3 2. Defendants filed a Chapter 7 bankruptcy petition on September 16, 2010.

4 3. Jurisdiction is vested in this proceeding pursuant to 28 U.S.C. § 157, 28 U.S.C.
5 §1334, AND 11 U.S.C. § 523; this matter is a core proceeding.

6 4. Plaintiff is a creditor of defendant. Plaintiff is the assignee and current owner
7 and/or holder of Defendants' loan and related mortgage note.

8 **II. FIRST CLAIM FOR RELIEF**

9 **False Pretenses, False Representation or Actual Fraud**

10 **[11 U.S.C. § 523(a)(2)(A); 11 U.S.C. §523(a)(2)(B)]**

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12 5. Plaintiff re-alleges and incorporates by reference the allegations set forth in
13 paragraphs 1 through 4, above.

14 6. Plaintiff has attempted to resolve this matter prior to filing this complaint by
15 contacting the Defendants.

16 7. In an effort to obtain funds to purchase real property, Defendants applied for and
17 obtained a loan bearing Loan No. XXXXX0338.

18 8. Defendant utilized the aforementioned loan, creating a balance due and owing on
19 this loan of \$73,673.08 including interest as of the date the bankruptcy petitioner was filed.

20 9. In an effort to obtain funds to purchase their property, Defendants caused to have
21 completed on their behalf, a Uniform Residential Loan Application, otherwise known as a 1003
22 Form, which Defendants executed and signed.

23 10. On the Uniform Residential Loan Application, Defendants certified the accuracy
24 of the information contained therein and consented to the verification and re-verification of the
25 information contained therein.

26 11. Among the information provided and certified by Defendants in their Uniform
27 Residential Loan Application, Defendants were required to certify information regarding their
28

1 current employer, statements of their gross monthly income, and to certify that their intended to
2 use the loan proceeds to purchase real property which Defendants intended to use as their
3 primary residence.

4 12. In furtherance of their effort, because Defendants knew that their then current
5 income was insufficient to support the approval of the loan and/or in an effort to secure the more
6 favorable primary-residence financing rate, Plaintiff is informed, believes and thereon alleges
7 that Defendants:

8 a) Provided, prepared, caused to be prepared, false loan applications, which
9 misstated her employment, income and/or intended use of the property as a primary residence;

10 b). Certified a false loan application, which misstated their employment income
11 and/or intended use of the property as a primary residence; and

12 c). Caused their agents to submit to lenders a false loan application and other loan
13 related documents

14 13. The lender did not know, and had no reason to know, that the information and
15 documentation provided by Defendants in, and in conjunction with, their loan applications was
16 false, and in reliance on the information and documentation provided by Defendants to the lender
17 therein approved the loan.

18 14. Defendants executed a promissory note in favor of their initial lender, its
19 successors, transferees, and assigns (collectively hereinafter "LENDER").

20 15. The proceeds of the loan, as referenced in the promissory note, were to be used by
21 Defendants in the purchase or refinance of the property described therein. In exchange,
22 Defendants agreed and promised to pay Lender according to the mutually agreed upon terms and
23 conditions more particularly described in the promissory notes.

24 16. At the time of the execution of the loan, Defendants failed to disclose to Lender
25 that they did not and would not have been able to earn the amount of income as represented on
26 the loan applications.

27 17. Lender fully performed, and Defendants acquired title to the property.
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1 18. The promissory note was duly assigned by the original lender and/or its assignees
2 to Plaintiff, who is the current owner and/or holder of Defendants' Loan and related mortgage
3 note.

4 19. Defendants have defaulted on their obligations to re-verify the information
5 contained in their Uniform Residential Loan Application. Despite Plaintiff's attempts to secure
6 information from Defendants to re-verify the information contained in their loan application,
7 Defendants have failed and/or refused to comply with Plaintiff's requests.

8 20. By reason of the foregoing, Defendants obtained money from Lender through
9 false pretenses, false representations and actual fraud.

10 21. Defendants, therefore, had a specific intent to defraud Lender by accepting the
11 benefits of the financing without ever intending to repay the same.

12 22. Defendants' actions constitute material misrepresentations of the facts.

13 23. Defendants intended for Lender to rely on those misrepresentations.

14 24. Lender did rely upon Defendants' misrepresentations of repayment and was
15 induced to lend money to Defendants by those misrepresentations.

16 25. Lender reasonably relied on Defendants' misrepresentations.

17 26. As a result of Defendants' conduct, Plaintiff has suffered damages at a minimum
18 in the amount of \$73,673.08 plus interest and reasonable attorney fees.

19 Pursuant to 11 USC § 523(a)(2), Defendant should not be granted a discharge of this debt
20 to the Plaintiff in the amount of \$73,673.08 plus interest and reasonable attorney fees.

21 **III. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays that this Court grant the following relief:
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24 1. A monetary judgment against Defendants in the amount of \$73,673.08, plus
25 accrued interest at the contractual rate, plus, additional interest at the contractual rate, which will
26 continue to accrue until the date of judgment herein;
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1 2. An order determining that such debt is non-dischargeable under 11 USC §
2 523(a)(2);


3 3. An order awarding Plaintiff its attorneys' fees and costs incurred herein; and

4 4. An order awarding Plaintiff such additional relief as this Court deems just and
5 equitable.

6
7 Dated: November 30, 2010

8 **Respectfully Submitted,**
9 **LAW OFFICES OF JUSTIN T. RYAN**

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11 By: _____


Justin T. Ryan
Attorney for Plaintiff
Heritage Pacific Financial, LLC. dba
Heritage Pacific Financial